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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/603,208	06/23/2000	Markus Pompejus	BGI-124CP	9692

959 7590 11/21/2003

LAHIVE & COCKFIELD
28 STATE STREET
BOSTON, MA 02109

EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 11/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Communication R : Appeal	Application No. 09/603,208	Applicant(s) POMPEJUS ET AL.
	Examiner Alexander H. Spiegler	Art Unit 1637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on _____ is not acceptable because:
- (a) ☐ it was not timely filed.
 - (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 1.17(b).
 - (c) ☐ the appeal fee received on _____ was not timely filed.
 - (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 1.17(b) is \$_____.
 - (e) ☐ the appeal is not in compliance with 37 CFR 1.191 in that there is no record of a second or a final rejection in this application.
 - (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.
2. ☐ The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:
- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 1.192.
 - (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 1.17(c).
 - (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 1.17(c) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. Extensions of time may be obtained under 37 CFR 1.136(a).

3. ☒ The appeal in this application is DISMISSED because:
- (a) ☒ the statutory fee for filing the brief as required under 37 CFR 1.17(c) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
 - (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
 - (c) ☐ Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
 - (d) ☐ other: _____
4. ☒ Because of the dismissal of the appeal, this application:
- (a) ☐ is abandoned because there are no allowed claims.
 - (b) ☒ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
 - (c) ☐ is before the examiner for consideration of the submission and prosecution has been reopened pursuant to 37 CFR 1.114.

DETAILED ACTION

Status of the Application

1. This action is in response to the Notice of Appeal filed on April 7, 2003. Currently, claims 39-70 are pending.

Dismissal of Appeal

2. In view of applicant's failure to file a brief within the time prescribed by 37 CFR 1.192(a), the appeal stands dismissed and the proceedings as to the rejected claims 39, 41 and 43-70 are considered terminated. See 37 CFR 1.197(c).

This application will be passed to issue on allowed claims 40 and 42 provided the following formal matters are corrected. Prosecution is otherwise closed.

A) As previously indicated in the office action mailed on November 6, 2002, the disclosure is objected to because tables 1-4 are not in the specification. These tables are referred to in the specification, however, they do not appear in the application.

Applicant is required to make the necessary corrections within a shortened statutory period set to expire ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing date of this letter. Extensions of time may be granted under 37 CFR 1.136.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander H. Spiegler whose telephone number is (703) 305-0806 or (571) 272-0788 after January 22, 2004. The examiner can normally be reached on Monday through Friday, 7:00 AM to 3:30 PM.

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If attempts to reach the examiner are unsuccessful, the primary examiner in charge of the prosecution of this case, Carla Myers, can be reached at (703) 308-2199 or at (571) 272-0747 after January 13, 2004. If attempts to reach Carla Myers are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on (703) 308-1119 or at (571) 272-0782 after January 22, 2004. The fax number for the organization where this application or proceeding is assigned is (703) 872-9306. Applicant is also invited to contact the TC 1600 Customer Service Hotline at (703) 308-0198.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



Alexander H. Spiegler
November 20, 2003



JEFFREY SIEW
PRIMARY EXAMINER

11/20/03